2008 STATE OF THE JUDICIARY
Chief Justice Christine M. Durham
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It is an extraordinary privilege to address the Utah Legislature in this magnificently restored historic chamber. So far as I know, it is the first time that a Chief Justice has had the opportunity to address a joint session in the Capitol itself, and I express appreciation for the courtesy you have extended by continuing the joint session tradition begun last year. It has been a privilege for me to have served for the past five years as a member of the Capitol Preservation Board, which has overseen the great work of historic preservation and renovation we all, as citizens of Utah, now enjoy. The Supreme Court is very much looking forward, as I am sure you have been doing, to returning to the Capitol. We will hear cases next month in our beautiful courtroom, and we invite you to participate in that event if you are able, on the morning of Wednesday the 6th of February. As I mentioned during the rededication ceremonies, I believe that it is symbolic, historically and constitutionally, that there are spaces in this building where all three branches of government may deliberate and perform their function in the government of the people of Utah.

I am pleased to be joined today by my colleagues on the Supreme Court: Associate Chief Justice Michael Wilkins and Associate Justices Matthew Durrant, Jill Parrish, and

Ronald Nehring. I also appreciate the presence of Utah's State Court Administrator Dan Becker. As you know, the constitutional responsibility for governance of the judicial branch in our state belongs to the Judicial Council, which I chair as Chief Justice and on which Justice Nehring now sits as our Court's representative. However, each of my colleagues undertakes significant leadership work with respect to both the responsibilities of the Court for procedural and evidentiary rulemaking, and oversight of the legal profession, as well as in accepting many assignments from the Judicial Council. In that regard, I would like to acknowledge the leadership and hard work that Justice Nehring has provided over the last two years to the Judicial Council's study of Utah's Justice Courts. I will spend a good part of my time here today discussing the results of that study, and wanted to recognize Justice Nehring's contributions to it.

First, however, I would like to report briefly on our progress on several initiatives we have undertaken in response to your direction over the last year. For example, having listened to concerns about increasing the efficiency of case processing articulated and embodied in legislation by Senator Greg Bell, we have under way a Caseflow Management Pilot Program implementing methods for reducing the time it takes cases to move through the resolution process. A mental health court for juveniles is now helping troubled youth in Cache County thanks to Senator Lyle Hillyard's legislative work in the

last session. Treatment for criminal defendants for drug addiction is now more widespread, in response to Senator Chris Buttar's work on DORA, and we are coordinating regular court-annexed divorce orientation programs as provided for by Representative Lorie Fowlke's bill. Each of these efforts is fully underway and shows considerable promise for the continued improvement of services to the public. There are many more examples, but I mention these because they reflect the efforts of the courts to be responsive and accountable to the Legislature for the fiscal and policy direction you provide. They also represent the positive results of collaboration between the three branches of government in the improvement of the administration of justice.

Our efforts in that work are often simply taken as a "given," but I am pleased to report that Utah's courts increasingly enjoy what I consider to be a well-deserved reputation for excellence and leadership in court administration. We frequently receive requests from other states for technical assistance and advice, and in the last several months, we have hosted study delegations from the court systems in South Korea, China, Liberia, Kurdestan, and Ukraine.

Of far more importance, however, is what our own court users are saying. I mentioned last year that the Judicial Council has implemented a comprehensive system of

performance measures to monitor how we are doing in fulfilling our mission. One of the regular measurements we have undertaken is to survey court users about their experiences. We do this by taking a snapshot of all the people leaving a particular courthouse on a particular day. Our latest survey of 1800 court users from all over the state, found that 93 percent said they understood what happened in their case and why, 95 percent said they knew what they should do next in their case, 90 percent said they felt that both sides had been treated the same, and 94 percent said they were treated with courtesy and respect by the judge and court staff. The full results of the survey, along with all the other performance data we are now collecting, can be viewed on our website at www.utcourts.gov. One of the best features of the information on the website is that it is organized so that it can be looked at by district, by county, and even by individual courthouse. For example, St. George courthouse users showed a much lower level of public satisfaction than the numbers I cited earlier, when asked about court facilities. Senator Hickman and Representatives Clark, Last and Urquhart would, I think, feel particularly good about their work in securing funding for the new courthouse there if they looked at the reaction of court users to the overcrowded and outdated facilities currently in use.

The opinions that court users have are important. My husband is a pediatrician who frequently works with families in various kinds of difficult situations. One of the truths he taught me many years ago is that "feelings are facts," meaning that you must deal with the perceptions, emotions, and attitudes that people have about their experiences if you really want to help. That principle has its corollary in the work of the courts: the public's perceptions of our work is as critical to the confidence they have in the courts as are the objective facts of what we do. We are constantly focused on the perceptions we want the public to have of their courts and try to work on those goals in specific ways. For example, we want the public to perceive their courts as accessible, and are constantly improving our programs to assist self-represented litigants. Our Internet-based Online Court Assistance Program (OCAP) was used to generate legal documents for 8000 filings in the past year. Last year I told you that a quarter of all divorce filings were initiated with forms prepared on OCAP; this year's number is up to 42 percent. Also, our Court's recent approval of a practice known as "unbundling" of legal services is beginning to be reflected in court proceedings around the state where litigants can retain the services of lawyers for only the parts of their cases they need help with, at much reduced cost. Recently, a district judge in Davis County presided over a complicated domestic case in which both parties were representing themselves. A number of hearings had been held, which were

extremely stressful largely because of the parties' unfamiliarity with procedural and legal requirements. At the final hearing, one of the parties was able to secure the services of a local attorney for the purpose of only that one hearing, something that would not have been possible without the new rule on unbundling. Because of the lawyer's assistance, what would likely have been a difficult, all-day process instead resulted in a one-hour hearing and what the judge describes as a fair resolution, understood and largely stipulated to by both parties. Not inconsequentially, the result was achieved at a fraction of the cost of traditional representation.

We want people to perceive that their courts are efficient, and, in addition to the case flow management pilot program I mentioned earlier, we are engaged in other projects, like a Model Juvenile Delinquency Court that is exploring ways to increase timely dispositions while preserving fairness standards. We have begun the use of electronic warrants, which will permit judges to review and act on law enforcement warrant requests instantly from any location at any time. We are also currently completing a process that will extend electronic filing to all civil cases before the end of your session. And, as I mentioned in my remarks last year, we are very proud of the transparency with which we conduct our work. On our website, thanks to the

performance measures contained in our CourTools program, we publish all the data that enables us to analyze our productivity and understand emerging trends.

We want people to perceive that their courts will protect the interests of those who cannot protect themselves. Courts have traditionally overseen the system of guardianships and conservatorships for those who are disabled for any reason, including old age. The Judicial Council has initiated a major project to identify how we can better exercise that oversight, and how our rules, our practices, and perhaps even the statutes might be changed to better serve and protect people with disabilities and their families.

Finally, and most important of all, we want the public to perceive that their courts are fair and impartial. Without this perception, there cannot exist an essential element of our form of government—public trust and confidence in the judicial branch. Our focus on this perception is reflected in the project I mentioned earlier and about which I am sure you have heard: the Judicial Council's study of the justice courts in Utah. There is, in my view, no more pressing problem of public perception regarding Utah's court system than the justice courts. Let me provide some context for this discussion.

The survey results I mentioned earlier came from user experiences in the courts of 111 judges at the state level. Considering the "judicial system" more globally (which is of course the way most citizens see it), Utah actually has 219 judges, 108 of whom serve in

the justice courts. We have 178 court locations in Utah; 138 of them are county or municipal justice courts. Of the approximately 860,000 court cases filed last year in Utah, 587,000 (almost 70%) were filed in the justice courts. It is axiomatic that for most Utah citizens, justice court is the court with which they are most likely to have experience. These courts range from large municipal courts with multiple judges and extensive staff to very small courts, where only 2 or 3 cases might be filed in a week and court hearings might be held only once a month. We should be in no doubt, however, about their collective impact: last year Utah's justice courts generated over $72,000,000.00 in revenue, and projections for the coming year put the number at $84,000,000.00.

The Judicial Council decided two years ago to undertake a study of the justice court system because of a number of factors. Among those factors were: (1) an increase in the number of justice courts, particularly large courts in Salt Lake City, West Valley City, Ogden, and Provo; (2) the importance of the kinds of cases heard in justice courts; the vast majority of DUI and domestic violence cases are now handled there, as well as civil cases now involving amounts up to $7500.00; (3) legislative demands for improved record-keeping in the justice courts; (4) a growing public perception that justice courts are vehicles for generating revenue, never a proper function for courts as institutions;

(5) pressures on judicial independence in decision making, both real and perceived; (6) litigation challenging the constitutionality of the structure and jurisdiction of the justice courts; and (7) multiple issues regarding uniformity and consistency in practice and procedure.

The Judicial Council formed a committee, chaired by Justice Nehring, to examine these and other issues. In the course of the committee's work, its members and staff spoke to large numbers of interested stakeholders all over the state. In some ways, what the committee undertook could be analogized to the recent restoration of this building. A time had come when it became clear that cosmetic changes or interim repairs were insufficient. Although many improvements to the justice court system have been made, such as significant attention to the education and training of judges and court staff, it became apparent that, as with the Capitol, structural work needed to be done.

The committee's recommendations, which have now been endorsed by the Judicial Council and which are incorporated in a bill sponsored by Senator Lyle Hillyard, were predicated on three paramount principles: First, the decision to create and maintain justice courts should remain with local government; this is <u>not</u> a proposal for state government to take over the justice courts; Second, justice courts must be, and must be perceived to be, fair and impartial places for dispute resolution, not revenue generating

entities; and Third, justice courts must be presided over by highly competent, well-trained judges. These are the principles that guided the committee's work, and the proposal that has emerged from that work is the direct result of widespread agreement on the validity and importance of those principles. There will no doubt be differing views about the specifics of the proposed changes, but I urge you to give careful consideration to the principles underlying Senator Hillyard's bill. There has been some discussion already about the proposal, and unfortunately some of it has been premised on misinformation about what it actually does, so I hope that in your work you will focus on its actual language. In the end, I urge you to seize this opportunity to reform a system in need of attention and to enhance the public's confidence in these courts.

As with justice courts, the competence of judges at all level of the judiciary is important to the people, which brings me briefly to the subject of judicial performance evaluation. You will be considering in this session a bill, sponsored in the Senate by Senator Buttars, to make changes in the structure of our program for judicial performance evaluation in Utah. The proposal is the work of a legislative task force on judicial retention that you created last session, on which I, Judge Gary Stott of the 4th District Court and Judge Hans Chamberlain of the 5th District Juvenile Court were invited to sit, a

courtesy appreciated by the judiciary. I must preface my comments with the observation that, from the judiciary's perspective, the current program is not in need of change; we have not been persuaded that there is a significant case to be made that the evaluation process itself, as opposed to the logistics of the voter information process, is inadequate in any way. In fact, the standards for judicial performance and the means for measurement embodied in the proposed legislation are nearly identical to those currently in place. Having said that, I acknowledge that there is legislative interest in having the evaluation process administered by an independent commission rather than by the Judicial Council, and the proposal in the legislation takes that approach. I would observe that for such a system to be fair and effective, two things are absolutely essential: the commission must be completely independent and free from the possibility of any kind of public or political pressure that would put at risk the impartiality and independence of the decision making function of judges, and the commission must be adequately funded to carry out its ambitious assignment. Given that the bill as proposed appears to contemplate both of these essentials, the Judicial Council has determined that, although we cannot support it because of our position that it is unnecessary, we do not oppose the approach it advances.

I would like to turn finally to a few comments that relate to things I have said today about public confidence in the courts. No institution can be better than its people, and I am exceedingly proud of the dedicated, hard-working judges and staff who work for the courts. However, we are in one respect in considerable trouble, and we are asking this year for your help. Our deputy court clerks are our front-line employees. They are expected to perform a wide array of complex tasks requiring a high level of skill, including assisting court customers in person and over the telephone; assisting attorneys and self-represented litigants; setting court calendars; scheduling interpreters, court reporters, and mediators; coordinating with outside agencies and attorneys; monitoring case progress; preparing required notices; recording the outcomes of hearings and trials; managing jury pools; collecting court fees, fines, and restitution; and balancing and reconciling accounts. We are experiencing unprecedented turnover in our deputy clerk positions throughout the state and related difficulty in recruiting for those jobs. Fully 41 percent of new deputy court clerks leave the state courts before reaching one year of service; ironically, a large number of them leave to take higher paying jobs with local justice courts. The work of court clerks has no analogue in the private sector, so new hires require a significant investment of time and training; it is a huge loss when those people leave us, and it has a direct, negative impact on the efficiency of the courts. Morale, as well as productivity, is

affected when experienced clerks must spend significant portions of their time training new people who will not stay; personal and professional relationships are disrupted and the workplace suffers. Our analysis reveals that deputy clerk positions are currently among the lowest pay scales in all of state government, despite their relatively sophisticated demands. To address this problem we are asking for the funds for a market comparability adjustment, and we hope that you will agree about the urgency of the issue.

With respect to judicial compensation, we remain very appreciative of the attention you paid to this issue last year, and we hope that we can stay on track with the recommendation of our citizen committee and the recommendations of your Executive and Judicial Compensation Commission. Our expectation is that those recommendations will put us in the position of being able to stay "caught up" with only regular state employee cost of living increases in the future.

Oliver Wendell Holmes Sr. once said: "Greatness is not so much where we stand, as in what direction we are moving. We must sail sometimes with the wind, and sometimes against it, but sail we must. And not drift, nor lie at anchor." Utah's judicial branch is not drifting, nor are we standing still. We are actively addressing efficient case management practices; we have embraced and are honing the effectiveness of problem-

solving courts; we are working to ensure that people who need to represent themselves in court, and people who face language and other kinds of barriers to access, can ask for and receive justice; we are constantly seeking ways in which we can reach out to Utah's communities and educate our children about the rule of law; and we are actively engaged in planning for the kinds of structural and other change that will improve and sustain the trust and confidence that the people have in the courts. Although our institutional cultures and decision-making processes are very different, our two branches of government share fundamental commitments to fairness, justice, and public service. We in the judiciary look forward to a year of positive, collaborative work with you and your leadership, and to sailing, to use Dr. Holmes' metaphor, in the right direction.

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